Sin Yeap Holdings (M) Sdn Bhd v Hasan Sabri & Hashim Nazri (suing as a firm)

HIGH COURT (SHAH ALAM) — CIVIL APPEAL NO BA-12BNCVC-30–07 OF 2022
TEE GEOK HOCK J
3 MAY 2023

Legal Profession — Remuneration — Bill of costs — Whether legal firm's invoice for lump sum figure in respect of both contentious and conveyancing works done for client was not valid bill of costs under Legal Profession Act 1976 ('LPA') — Whether LPA required contentious and non-contentious work done for client to be separately and clearly invoiced and not lumped together in single bill — Whether since firm's invoice was not valid bill of costs under LPA it was premature for firm to sue client for recovery of invoiced amount

The respondent was a law firm which had acted for the appellant in both contentious and non-contentious matters. The appellant's complaint in the instant appeal was that the respondent's invoice for work done was improper as it merely stated a global figure of RM300,000 for the firm's handling of eight court cases and four conveyancing matters for the appellant. After delivery of the invoice and not receiving payment from the appellant, the respondent had sued on the invoice and obtained judgment for the RM300,000 in the sessions court which held that since the appellant had not disputed the invoice within one year of its delivery, the sum stated in the invoice became final and undisputable under the Legal Profession Act 1976.

Held, allowing the appeal, setting aside the sessions court's decision, striking out the respondent's suit in the sessions court but allowing the respondent liberty to file it afresh after expiry of one month after delivery of a valid bill of costs to the appellant in respect of work done:

(1) The respondent's invoice to the appellant was not a valid bill of costs under the Legal Profession Act 1976 ('the LPA') as it did not specify the amount of fees for each of the eight contentious cases and four conveyancing matters that the firm had handled. The invoice merely stated a lump sum figure of RM300,000 for all of those matters combined together (see paras 16–18).

(2) The Solicitors' Remuneration Order 2005 ('the SRO') regulated the fees solicitors could charge in respect of non-contentious business. It stated different amounts or scale of fees for different types of work. This was different from the rules and provisions in respect of fees for contentious business which could either be in a detailed format or for a gross sum. A

bill of costs for a global sum under the LPA must not combine different cases or matters in one single invoice, must not mix contentious business and non-contentious business together in a single invoice, and shall inform the client briefly of the nature of services rendered in the case or matter which formed the subject-matter of the invoice and the global sum which was claimed as the fee for the subject-matter of the invoice (see paras 14 & 19).

(3) Since the parties in the present case did not have an agreement on the respondent's fees, ss 121–132 of the LPA applied in that, inter alia, the firm had to issue a separate bill of costs for each case or matter it had handled and could not combine into one bill the claims for both contentious and non-contentious business (see paras 11 & 13–14).

(4) An advocate and solicitor had to issue a separate bill of costs in respect of each case or matter he or she had handled because: (a) it would make it easier to determine if a bill of costs had become time-barred six years after the completion of a contentious or non-contentious piece of work. If two or more pieces of such work were combined into a single lump sum bill, it might prejudice the client's right to rely on the defence of limitation and also make it difficult, if not impossible, for the court to assess which part or amount of the lump sum bill was time barred; (b) since the SRO set out the scale of fees for non-contentious work, it was consonant with the policy of the SRO that the bill of costs for each non-contentious matter (including conveyancing matters) should be prepared and delivered separately from each other and also separately from contentious matters to ensure that the scale fees laid down in the SRO had been complied with. Combining the claims for contentious and non-contentious work into a single lump sum might create an opportunity for a lawyer to overcharge for non-contentious work done. Such combination of fee claims for contentious and non-contentious matters was also not consistent with the policy and rationale of the SRO; and (c) by issuing and delivering a separate bill of costs for contentious and non-contentious matters, and by not lumping them together, the client would be in a better position to decide which part of the bill he/she did not agree with and wished to dispute. This would avoid unnecessary litigation (see para 15).

(5) Since there was no written agreement between the parties on the respondent's remuneration for work done, the respondent could only sue for fees and costs based upon a valid bill of costs having first been issued and delivered to the appellant. As the bill of costs that was delivered was not a valid one under the LPA, the respondent's suit against the appellant was premature and had to be set aside (see paras 24–28).

[Bahasa Malaysia summary

Responden adalah sebuah firma guaman yang mewakili perayu dalam dua prosiding 'contentious' dan 'non-contentious'. Pertikaian perayu di dalam kes rayuan ini adalah mengenai invois yang diisukan oleh responden untuk kerja yang dilakukan adalah tidak wajar kerana ianya hanya menyatakan jumlah global sebanyak RM300,000 untuk perkhidmatan firma itu terhadap lapan kes mahkamah dan empat perkara conveyancing kepada perayu. Selepas invois diserahkan dan perayu tidak membayar perayu, responden telah menyaman untuk jumlah di dalam invois itu dan memperoleh penghakiman bagi jumlah RM300,000 itu di mahkamah sesyen yang memutuskan bahawa memandangkan perayu tidak mempertikaikan invois dalam tempoh satu tahun selepas penyerahannya, jumlah yang dinyatakan dalam invois adalah muktamad dan tidak boleh dipertikaikan menurut Akta Profesion Undang-Undang 1976.

Diputuskan, membenarkan rayuan, mengenepikan keputusan mahkamah sesyen, membatalkan saman responden dengan kebebasan untuk memfailkan semula di mahkamah sesyen selepas tamat tempoh satu bulan selepas penyerahkan bil kos kepada perayu mengenai jumlah kerja yang dibuat:

(1) Invois responden kepada perayu adalah bukan bil kos menurut Akta Profesion Undang-Undang 1976 ('APUU') kerana ianya tidak memperincikan setiap lapan kes 'contentious' dan empat kes conveyancing yang dikendalikan oleh firma tersebut. Invois itu hanya menyatakan jumlah keseluruhan sebanyak RM300,00 untuk kesemua perkara yang dikendalikan (lihat perenggan 16–18).

(2) Perintah Saraan Peguam Cara 2005 ('PSPC') mengawal selia kadar fi yang boleh dikenakan oleh peguam cara berkaitan kerja-kerja 'non-contentious'. Ianya menyatakan jumlah atau skala fi yang berbeza untuk pelbagai jenis kerja. Ini adalah berbeza dengan kadar fi kes-kes 'contentious' yang mana ianya boleh diletakkan di dalam jumlah terperinci atau jumlah kasar. Bil kos untuk jumlah global menurut APUU tidak boleh menggabungkan kes atau perkara yang berbeza di dalam satu invois yang sama, tidak boleh mencampurkan kes-kes 'contentious' atau 'non-contentious' di dalam satu invois, dan sepatutnya menjelaskan kepada anak guam secara ringkas mengenai perkhidmatan yang telah dilakukan yang merupakan satu perkara asas di dalam invois dan jumlah global yang dituntut menurut perkara asas tersebut (lihat perenggan 14 & 19).

(3) Memandangkan pihak-pihak di dalam kes ini tidak mencapai persetujuan mengenai fi yang dikenakan oleh responden, ss 121–132 APUU boleh digunapakai, antara lain, firma hendaklah mengeluarkan bil kos yang berasingan untuk setiap kes atau perkara yang telah dikendalikan dan kes-kes 'contentious' dan 'non-contentious' tidak boleh

digabungkan di dalam satu bil yang sama (lihat perenggan 11 & 13–14).

(4) Peguambela dan peguamcara sepatutnya mengeluarkan bil kos untuk setiap kes atau perkara yang dikendalikan kerana: (a) lebih mudah untuk menentukan sama ada bil kos telah dihalang oleh had masa enam tahun selepas selesai kerja 'contentious' atau 'non-contentious' tersebut. Sekiranya dua atau lebih kerja tersebut digabungkan menjadi satu bil kos, ianya mungkin menjejaskan hak anak guam untuk bergantung pada pembelaan had masa dan juga menjadikannya sukar, dan mungkin mustahil, bagi mahkamah untuk menilai bahagian atau jumlah bil yang digabungkan yang mana terhalang oleh had masa; (b) memandangkan PSPC telah menetapkan kadar fi untuk kerja yang 'non-contentius', adalah selari dengan polisi PSPC untuk bil kos untuk setiap perkara 'non-contentious' (termasuk perkara conveyancing) harus disediakan dan diserahkan secara berasingan dan juga secara berasingan dari perkara 'contentious' untuk memastikan bahawa skala fi yang ditetapkan dalam PSPC telah dipatuhi. Menggabungkan tuntutan untuk kerja 'contentious' dan 'non-contentious' ke dalam satu jumlah yang sama mungkin mewujudkan peluang bagi seorang peguam untuk mengenakan bayaran yang berlebihan untuk kerja 'non-contentious'. Gabungan tuntutan fi untuk perkara-perkara 'contentious' dan 'non-contentious' juga tidak selaras dengan dasar dan tujuan PSPC; dan (c) dengan mengemukakan dan menyerahkan bil kos yang berasingan untuk kerja-kerja 'contentious' dan 'non-contentious', dan tidak menggabungkan kedua-duanya, anak guam akan mempunyai kedudukan yang baik untuk memutuskan bil kos yang mana dia tidak bersetuju atau boleh dipertikaikan. Hal ini dapat mengelakkan litigasi yang tidak diperlukan (lihat perenggan 15).

(5) Memandangkan tiada perjanjian bertulis antara pihak-pihak mengenai bayaran responden untuk kerja yang dilakukan, responden hanya boleh menyaman untuk fi dan kos berdasarkan bil kos yang sah yang pertama kali dikeluarkan dan dihantar kepada perayu. Oleh kerana bil kos yang dikemukakan tidak sah di menurut APUU, saman responden terhadap perayu adalah pra-matang dan perlu diketepikan (lihat perenggan 24–28).]

Cases referred to

Lim Kien Seng & Anor v Manoharan a/l Kandasamy (practising under the name and style of Tetuan K Mano & Associates) [2021] 2 MLJ 501; [2021] 2 CLJ 307, FC (refd)

Legislation referred to

Legal Profession Act 1976 ss 113(6), 114, 116, 121, 121(1), 124, 125, 126, 128, 128(1), (2), 132
Solicitors' Remuneration Order 2005

Eugene Khoo Yean Shern (Yeoh Shim Siow & Lay Kuan) for the appellant.
Noor Amalina bt Mursiedy (Hashim Amran Tabian Ahmad) for the respondent.

Tee Geok Hock J:

INTRODUCTION

[1] Although the Legal Profession Act 1976 gives some preferential treatment to an advocate and solicitor's claim for legal professional fees against his/her client, there are still some checks-and-balances embodied in the Act to safeguard the position of the client vis a vis the advocate and solicitor.

[2] The present appeal is an example of a case where an advocate and solicitor's combination of several conveyancing matters and multiple contentious matters into a single invoice with a single total lump sum amount of claim for legal fees which has contravened the requirements of billing under the Legal Profession Act 1976 and to the prejudice of the client.

BACKGROUND FACTS

[3] The respondent/plaintiff is a firm of advocates and solicitors, while the appellant/defendant is a private limited company who was the client of the law firm.

[4] In the respondent/plaintiff's invoice No 17418 dated 17 April 2018 (the subject-matter of this suit) (appeal records, *Jld* 2C (encl 6), pp 557–567), the respondent/plaintiff listed in a table and appendices a total of 12 items of which there were eight different and separate court cases (ie contentious matters) and four conveyancing matters (non-contentious matters), stated the dates of rendering the services and then put a single lump sum of RM300,000 as the fees for all the court cases (contentious business) and conveyancing matters (non-contentious business) in combination.

[5] Subsequent to sending the said invoice No 17418 dated 17 April 2018, the respondent/plaintiff in August 2019 filed the suit in the sessions court to claim for the said single lump sum fee of RM300,000 from the appellant/defendant, their ex-client.

[6] After the trial of the action, the sessions court allowed the claims of the respondent/plaintiff's in full and ordered the appellant/defendant to pay the said single lump sum fee of RM300,000 and disbursements, interests and costs to the respondent/plaintiff, the law firm.

[7] On appeal, this court on 10 November 2022 allowed the appellant/defendant's appeal, set aside the sessions court's judgment, struck out the respondent/plaintiff's writ and statement of claim and gave liberty for the respondent/plaintiff to file afresh upon the lapse of one month after the respondent/plaintiff's delivery of proper bills of costs to the appellant/defendant.

[8] Dissatisfied, the respondent/plaintiff has appealed to the Court of Appeal.

ADVOCATES AND SOLICITORS' REMUNERATIONS UNDER THE LEGAL PROFESSION ACT 1976

[9] Advocates and solicitors' remunerations for non-contentious business, ie including conveyancing matters, are specifically controlled and regulated by the provisions of the Legal Profession Act 1976 and the orders made thereunder. These statutory provisions include:

> 113 The Solicitors Costs Committee
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> (3) The Solicitors Costs Committee or any four of the members of the Committee (the Chief Judge or his nominee being one) may make general orders prescribing and regulating in any manner as they think fair and reasonable the remuneration of advocates and solicitors in respect of non-contentious business and any order made under this section may revoke or alter any previous order so made.
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> (6) So long as an order made under this section is in operation, taxation of bills of costs of advocates and solicitors in respect of non-contentious business shall, subject to section 121, be regulated by that order.
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> 114 Advocate and solicitor may make agreement for remuneration from client
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> (1) Whether or not any order is in force under section 113, an advocate and solicitor and his client may, either before or after or in the course of the transaction of any non-contentious business, make an agreement as to the remuneration of the advocate and solicitor in respect thereof:
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> Provided that such agreement shall not provide for costs at a scale lower than that provided by any order made under section 113.
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> (3) The agreement shall be in writing and signed by the person bound by it or as his agent on his behalf.
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> (4) The agreement may be sued and recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of an advocate and solicitor:
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> Provided that if on any taxation of costs the agreement is relied on by the advocate and solicitor and objected to by the client as unfair or unreasonable, the taxing officer may inquire into the facts and certify them to the Court, and if on

that certificate it appears just to the Court that the agreement should be cancelled, or the amount payable thereunder reduced, the Court may order the agreement to be cancelled, or the amount payable to be reduced, and may give such consequential directions as the Court thinks fair and reasonable.

116 Advocate and solicitor may enter agreement for costing contentious business

(1) Subject to any written law, an advocate and solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of his costs in respect of contentious business done or to be done by such advocate and solicitor, either by a gross sum, or otherwise, and either at the same rate or at a greater or lesser rate than the rate at which he would otherwise be entitled to be remunerated.

(2) Every such agreement shall be signed by the client and shall be subject to this Part.

118(3) If the substantive terms of any agreement are deemed by the Court or the Judge to be unfair or unreasonable, the agreement may be declared void, and the Court or Judge may thereupon order the agreement to be given up for cancellation, and may direct the cost, fees, charges and disbursements incurred or chargeable in respect of the matters included therein to be taxed, in the same manner and according to the same rules as if the agreement has not been made: Provided that the Court or Judge may amend or ratify the agreement where not all the substance of the agreement is unfair or unreasonable.

121 Where remuneration of advocate and solicitor not subject of agreement

(1) Where the remuneration of an advocate and solicitor in respect of contentious business done by him is not the subject of an agreement made pursuant to section 116, the solicitor's bill of costs may at the option of the advocate and solicitor either contain detailed items or be for a gross sum: Provided that —

(a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three months from the date of the delivery to him of the bill, the party chargeable therewith may require the advocate and solicitor to deliver to him in lieu of the cost a bill containing detailed items, and the gross sum bill shall thereupon be of no effect;

(b) where an action is commenced on a gross sum bill, the Court shall, if so requested by the party chargeable therewith before the expiration of one month from the service on that party of the writ or other originating process, order that the bill shall be taxed;

(c) if a gross sum bill is referred to taxation, whether under this section or otherwise, nothing in this section shall prejudice any rules of court with respect to taxation and the advocate and solicitor shall furnish the taxing officer with such details of any of the costs covered by the bill as the taxing officer may require.

(2) Subsection (1) shall not apply to fees paid to an advocate and solicitor who is briefed as a senior counsel.

PART IX

RECOVERY AND TAXATION OF COSTS

123 Advocate and solicitor entitled to charge on property for costs

Any court in which an advocate and solicitor has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the advocate and solicitor entitled to a charge on the property recovered or preserved in such suit, matter or proceeding for such advocate and solicitor's taxed costs in reference to that suit, matter or proceeding, and may make such orders for the taxation of the costs and for raising money to pay, or for paying, the costs out of the property as it thinks fair and reasonable, and all conveyance and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the advocate and solicitor.

124 No advocate and solicitor to sue for costs until delivery of bill of cost

(1) Except as authorized by this Act, no advocate and solicitor shall without the leave of the court commence or maintain any action for the recovery of any costs due for any business done by him until the expiration of one month after he has delivered to the party to be charged therewith, or sent by post to, or left with him at, his office or place of business, dwelling house or last known place of abode, a bill of costs, which bill shall be signed either by the advocate and solicitor, or in the case of a partnership, by any of the partners, either with his own name or with the name or style of the partnership, or by another advocate and solicitor employed by the first-named advocate and solicitor or the partnership, or be enclosed in or accompanied by a letter, signed in the like manner, referring to the bill.

(2) Where a bill is proved to have been delivered in compliance with subsection (1) it shall not be necessary in the first instance for the advocate and solicitor to prove the contents of the bill and it shall be presumed until the contrary is shown to be a bill bona fide complying with this Act.

Section 3 defines 'the court' thus: 'Court' means the High Court or a Judge thereof when sitting in open Court, and 'Judge' means a Judge of the High Court sitting in Chambers'.

125 Power of court to authorize solicitor to commence action

The Court may authorize an advocate and solicitor to commence an action for recovery of his costs and also refer his bill of costs for taxation by the Registrar, although one month has not expired from the delivery of the bill, upon proof to its satisfaction that any party chargeable therewith is about to quit Malaysia, or to have a receiving order made against him, or to compound with his creditors or to take any other steps or do any other act which in its opinion would tend to defeat or delay the advocate and solicitor in obtaining payment.

126 An order for taxation of costs to be made within 6 months of delivery of bill of costs

(1) An order for the taxation of a bill of costs delivered by any advocate and

solicitor may be obtained by a petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost either to the party chargeable or to the advocate and solicitor, at any time within six months from the delivery of the bill, or, by the advocate and solicitor after the expiration of one calendar month, and within a year from, the delivery.

(2) The order shall contain such directions and conditions as the court thinks proper, and any party aggrieved by any order of Court may apply by summons in chambers that the same may be amended or varied or set aside.

(3) In any case where an advocate and solicitor and his client consent to taxation of a solicitor's bill the Registrar may proceed to tax the bill notwithstanding that there is no order therefor.

128 Order for taxation of advocate and solicitor's bill on notice given

(1) After the expiration of six months from the delivery of a bill of costs, or after payment of the bill of costs, no order shall be made for taxation of a solicitor's bill of costs, except upon notice to the advocates and solicitors and under special circumstances to be proved to the satisfaction of the Court.

(2) No such order for taxation shall in any event be made after the expiry of one year from the delivery of the bill of costs.

132 Bill of costs to follow Rules of Court

Bills of costs for taxation as between advocate and solicitor and client shall be drawn in the manner provided by the Rules of the High Court, and the taxation shall be governed by the Rules. The solicitors' remunerations for non-contentious business are regulated by the Solicitors' Remuneration Order 2005 which fixed scales of remunerations, subject to any valid and enforceable written agreement signed by the client regarding an agreed remuneration not lower than the scale fees.

[10] The Solicitors' Remuneration Order 2005 contains specific and detailed provisions on the scales and amounts of solicitors' fees for non-contentious businesses, and stipulate that the solicitors cannot charge fees in excess of the fixed scales, nor give discounts beyond what is expressly permitted by the provisions of the order. In contrast, there is no scale of fee prescribed or regulated for the contentious matters handled by advocates and solicitor.

First issue: Legal requirements for an advocate and solicitor's bill of costs

[11] In our present case there is no agreement, not to mention written signed agreement, between the plaintiff/advocate and solicitor and the defendant/client regarding amount or rate of fees for any contentious or non-contentious business

[12] In the circumstances, ss 114 and 116 of the Legal Profession Act 1976

A are not applicable to the facts of the present case.

[13] Instead, ss 121 and 132 of the Act are applicable to the present case where there is no agreement as to the fees.

B

[14] From the abovementioned provisions, it can be concluded that in the absence of a written agreement to the contrary:

(a) an advocate and solicitor's bill of costs in contentious business may, at the advocate and solicitor's option, either contain detailed items or be C for a gross sum: s 121(1);

(b) an advocate and solicitor's bill of costs in non-contentious business must comply with the scales of fees under the Solicitors' Remuneration Order 2005 which stipulate different amounts and/or scales for different items D of non-contentious matters: s 113(6) of the Legal Profession Act 1976 and the Solicitors' Remuneration Order 2005;

(c) there shall be one bill of costs for one case or matter handled by the advocate and solicitor for the client: see the reasons and explanations in paras 15(a)–(d) below; E

(d) an advocate and solicitor's bill of costs cannot mix up and combine together the advocate and solicitor's costs in contentious business and the advocate and solicitor's costs in non-contentious business: see the reasons and explanations in para 15(b) below; and F

(e) When taxation of bill of costs is ordered by the court, the bill of costs shall be drawn up in the manner provided by the Rules of Court: s 132 of the Act.

G **[15]** The reasons for the requirement that there shall be one bill of costs for one case or matter handled by the advocate and solicitor for the client are:

(a) limitation period of six years from the completion of contentious or non-contentious business applies to the advocate and solicitor's bill of costs: see Federal Court's decision in *Lim Kien Seng & Anor v Manoharan* H *a/l Kandasamy (practising under the name and style of Tetuan K Mano & Associates)* [2021] 2 MLJ 501; [2021] 2 CLJ 307 at para 16. The question whether or not an advocate and solicitor's claim for fee is barred by limitation period has to be determined according to the completion date of each and every contentious or non-contentious business. If the I advocate and solicitor were to combined two or more contentious matters or non-contentious matters into a single lump sum bill, it is prejudicial to the client's right of defence on limitation period and it would become impossible for the court to assess which part or amount of the combined lump sum is time barred;

(b) the Solicitors' Remuneration Order 2005 contains specific regulation and limits to the permissible scale of fees for non-contentious business. If an advocate and solicitor were allowed to combine his claims for contentious matter and non-contentious into a single merged lump sum, it would tantamount to allowing the advocate and solicitor to subtly overcharge his clients for non-contentious business. Such combination of fee claims for contentious matter and non-contentious matter is not consistent with the policy and rationale of the Solicitors' Remuneration Order 2005. It is in consonance with the policy of the Solicitors' Remuneration Order 2005 that an advocate and solicitor's bill of costs for each of the non-contentious matters (including conveyancing matters) be prepared and delivered separately from each other and also separately from the contentious matter so that there can be an effective assessment and checking whether or not the advocate and solicitor has complied with the scale fees laid down in the the Solicitors' Remuneration Order 2005;

(c) the law does not encourage excessive and/or unnecessary litigations. Where an advocate and solicitor has carried out multiple contentious and/or non-contentious matters for the same client, a separate bill of costs should be issued and delivered in respect of each matter so that the client can assess and decide which particular bills of costs to accept or to dispute. If the advocate and solicitor were to combined two or more contentious matters or non-contentious matters into a single lump sum bill, then any dispute by the client would inevitably involve the dispute of the entire combined lump sum so much so that all the matters comprised in the combined bill of costs are disputed and have to be heard and decided by the court. This entails unnecessary litigations which should not be encouraged by the law; and

(d) one of the purposes of requiring the advocate and solicitor to deliver and serve a bill of costs upon the client before allowing the advocate and solicitor to sue on it is to enable the client to know the exact amount of fee he is being charged for each matter handled by the advocate and solicitor. Where multiple matters are handled by the advocate and solicitor, separate bill of costs for each matter would give a fair and reasonable notice to the client of the amount of fee charge for each matter so that the client can make an informed decision which bill of costs to accept and which bill of costs to dispute. Combination of multiple matters into a single lump sum fee claim would deprive the client of such reasonable opportunity.

Second issue: Whether the respondent/plaintiff's subject invoice is a valid bill of costs

[16] In the respondent/plaintiff's invoice No 17418 dated 17 April 2018 (the subject-matter of this suit) (appeal records, *Jld* 2C (encl 6), pp 557–567),

A the respondent/plaintiff listed in a table and appendices a total of 12 items of which there were eight different and separate court cases (ie contentious matters) and four conveyancing matters (non-contentious matters), stated the dates of rendering the services and then put a single lump sum of RM300,000 as the fees for all the court cases (contentious business) and conveyancing
B matters (non-contentious business) in combination.

[17] In the invoice, there is no allocation or specification of an amount of fee for each of the eight court cases (contentious business) and four conveyancing
C matters (non-contentious business).

[18] In the considered opinion of this court, an invoice which included eight court cases (contentious matters) and four conveyancing matters (non-contentious matters) in a single document with a total lump sum figure
D stated as fee for the eight cases and four matters in combination is not a bill of costs within the meaning of the Legal Profession Act 1976.

[19] It is to be noted that the solicitors' remunerations in respect of non-contentious business are regulated by Solicitors' Remuneration Order
E 2005 which are different from the rules and provisions in respect of fees for contentious business. To constitute a bill of costs within the meaning of the Legal Profession Act 1976, a bill of cost for a global sum must not combine different cases or matters into one single invoice, must not mix contentious business and non-contentious business together in a single invoice, and shall
F inform the client briefly the nature of services rendered in the case or matter which forms the subject-matter of the invoice and the global sum the advocate and solicitor is claiming as the fee for subject-matter of the invoice. See also paras 14 and 15 above.

G *Third issue: Legal consequence of suing for recovery of fee without rendering a bill of costs*

[20] Sections 124, 125 and 126 of the Legal Profession Act 1976 provide as
H follows:

> 124 No advocate and solicitor to sue for costs until delivery of bill of cost
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> Except as authorized by this Act, no advocate and solicitor shall without the leave of the court commence or maintain any action for the recovery of any costs due for any business done by him until the expiration of one month after he has delivered to the
I party to be charged therewith, or sent by post to, or left with him at, his office or place of business, dwelling house or last known place of abode, a bill of costs, which bill shall be signed either by the advocate and solicitor, or in the case of a partnership, by any of the partners, either with his own name or with the name or style of the partnership, or by another advocate and solicitor employed by the

first-named advocate and solicitor or the partnership, or be enclosed in or accompanied by a letter, signed in the like manner, referring to the bill.

125 Power of court to authorize solicitor to commence action

The Court may authorize an advocate and solicitor to commence an action for recovery of his costs and also refer his bill of costs for taxation by the Registrar, although one month has not expired from the delivery of the bill, upon proof to its satisfaction that any party chargeable therewith is about to quit Malaysia, or to have a receiving order made against him, or to compound with his creditors or to take any other steps or do any other act which in its opinion would tend to defeat or delay the advocate and solicitor in obtaining payment.

126 An order for taxation of costs to be made within 6 months of delivery of bill of costs

(1) An order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost either to the party chargeable or to the advocate and solicitor, at any time within six months from the delivery of the bill, or, by the advocate and solicitor after the expiration of one calendar month, and within a year from, the delivery. Before the Court can have power to authorise the solicitor to commence an action to recover his costs, a bill of costs must be delivered to his client first.

[21] The court's power under s 125 is to authorise urgent commencement of action to recover advocate and solicitor's costs before the expiry of one month from the date of delivery of the bill of costs where special circumstance exist, but the court has no power to waive or dispense with the need of delivery of a bill of costs before the commencement of an action to recover the advocate and solicitor's costs against his/her client. In the premises, the law does not allow the advocate and solicitor to commence or maintain an action to recover his costs against his client without having first delivered his bill of costs to his client. As an analogy, the Federal Court in *Lim Kien Seng & Anor v Manoharan a/l Kandasamy (practising under the name and style of Tetuan K Mano & Associates)* has held that an advocate and solicitor who has not delivered a bill of costs was not entitled to seek an order of taxation: see para 22 of the judgment.

[22] In our present case, the respondent/plaintiff as advocate and solicitor has not issued or delivered proper bills of costs to the appellant/defendant in respect of the eight different and separate court cases (ie contentious matters) and four conveyancing matters (non-contentious matters) which the advocate and solicitor are making fee claims against its client, the respondent/plaintiff has no legal right to commence the present action prematurely in the sessions court against the appellant/defendant for recovery of the fee claims.

Fourth issue: Whether there was an enforceable agreement on fees for contentious business or non-contentious business

[23] Sections 114 and 116 of the Legal Profession Act 1976 provide as follows:

> 114 Advocate and solicitor may make agreement for remuneration from client
>
> (1) Whether or not any order is in force under section 113, an advocate and solicitor and his client may, either before or after or in the course of the transaction of any non-contentious business, make an agreement as to the remuneration of the advocate and solicitor in respect thereof: Provided that such agreement shall not provide for costs at a scale lower than that provided by any order made under section 113.
>
> (2) The agreement may provide for the remuneration of the advocate and solicitor by a gross sum, or by commission or percentage, or by salary, or otherwise, and it may be made on the terms that the amount of the remuneration stipulated in the agreement shall or shall not include all or any disbursements made by the advocate and solicitor in respect of searches, plans, travelling, stamps, fees or other matters.
>
> (3) The agreement shall be in writing and signed by the person bound by it or as his agent on his behalf.
>
> 116 Advocate and solicitor may enter agreement for costing contentious business
>
> (1) Subject to any written law, an advocate and solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of his costs in respect of contentious business done or to be done by such advocate and solicitor, either by a gross sum, or otherwise, and either at the same rate or at a greater or lesser rate than the rate at which he would otherwise be entitled to be remunerated.
>
> (2) Every such agreement shall be signed by the client and shall be subject to this Part.

[24] In the circumstances of the present appeal, there is no written agreement of any agreement signed by the appellant/defendant, whom the respondent/plaintiff claims as their client in all the cases and matters.

[25] In the absence of such written agreement on fees and remuneration in accordance with the Legal Profession Act 1976, the respondent/plaintiff as advocate and solicitor can only base their action for recovery of costs and remunerations upon valid bills of costs and after delivery of valid bills of costs to the client.

Fifth issue: Whether the respondent/plaintiff is entitled to maintain the action for recovery of the invoiced amount here

[26] As the respondent/plaintiff's invoice, the subject-matter of this appeal, does not constitute a bill of costs in the eyes of law, the respondent/plaintiff's

action in the sessions court has been commenced without a prior delivery of a bill of costs, and is prematurely commenced in contravention of the provisions of the Legal Profession Act 1976.

[27] In the premises, the respondent/plaintiff's action in the sessions court was premature and there is no valid basis for the sessions court to embark on hearing or adjudication of the respondent/plaintiff's solicitor invoice here.

[28] In the circumstances, the respondent/plaintiff was not entitled to maintain the action for recovery of the invoiced amount.

Miscellaneous issues

[29] In our present case, the main basis upon which the sessions court gave judgment in favour of the advocate and solicitor is that the client failed or neglected to dispute the advocate and solicitor's invoice within one year and that by lapse of time and by virtue of the provisions of the Legal Profession Act, the invoice has become absolute and not challengeable anymore.

[30] While the appellant-defendant here is salvaged from such predicament despite the absence of dispute within one year in our present case because the advocate and solicitor's invoice here is not a valid and proper bill of costs, many other clients in other cases may find it helpful to understand the legal consequences of ss 126 and 128 of the Legal Profession Act 1976.

[31] Under s 126 of the Act, a client who wishes to challenge the advocate and solicitor's bill of costs has to dispute it and apply for taxation of the bill of costs within six months from the delivery of the bill of costs.

[32] After the expiry of the said six months but before the end of one year from the delivery of the bill of costs, an order for taxation of the bill of costs may only be made under special circumstances to be proved to the satisfaction of the court: s 128(1). In practice, it is often difficult to prove special circumstances for such purpose.

[33] In the absence of any dispute by the client, the advocate and solicitor' bill of costs becomes indisputable or absolute after the expiry of one year from the delivery of the bill of costs: s 128(2). In such event, the client become duty-bound to pay the amount as stated the bill of costs.

[34] In practice there are advocates and solicitors who use different styles and formats for invoicing their clients. Even if a client thinks that his advocate and solicitor's invoice is not a valid and proper bill of costs in compliance with the Act, it is relatively safer for the client to dispute the same within six months

from its delivery, while leaving the question of the validity of the invoice as bill of costs to be argued and decided later.

[35] Under the Act and where there is no agreement to the contrary, the advocate and solicitor has a choice of delivering either a gross sum bill or a detailed itemisation of bill: s 121(1).

[36] Where a gross sum bill has been delivered, the client has the right to require that a detailed bill of itemised costs be delivered, provided that the client asks for the bill with detailed items at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three months from the date of the delivery to him of the bill: proviso to s 121(1). Upon such request being duly made within time by the client, the gross sum bill shall thereupon be of no effect. Thereafter, when a bill of costs with detailed items is delivered by the advocate and solicitor to the client, the client can dispute the detailed bill of costs within the stipulated time as per paras 31 and 32 above.

CONCLUSION

[37] In conclusion the appeal is allowed and the sessions court's judgment and order is hereby set aside.

[38] Ancillary thereto, the respondent/plaintiff's action in the sessions court is struck out with liberty to file afresh after the expiry of one month subsequent to the delivery of a valid bill of costs to the appellant/defendant in respect of each contentious or non-contentious matter. Costs of action and appeal should be costs in the cause of the fresh suit to be filed.

OTHER ISSUES AND ARGUMENTS

[39] After having dealt with the five issues abovementioned and having come to the conclusion that the respondent/plaintiff's action in the sessions court is not maintainable under the laws, it is academic and/or unnecessary to deal with the other issues in the appeal.

Order accordingly.

Reported by Ashok Kumar